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8   UNITED STATES DISTRICT COURT

9   SOUTHERN DISTRICT OF CALIFORNIA

10   CHARLES JOHNSON,   Civil No.   08-cv-1242-POR (JMA)

11   Plaintiff,   **ORDER GRANTING MOTIONS TO
                                                FILE FIRST AMENDED COMPLAINT,**
12   **DIRECTING U.S. MARSHAL TO**
              v.   **EFFECT SERVICE OF FIRST**
13   **AMENDED COMPLAINT, AND**
                                                SCHEDULING CASE MANAGEMENT
14   A. FIGUEROA et al.,   **CONFERENCE**

15   Defendants.   **[Docs. 55, 56]**

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17   **I. INTRODUCTION**

18   On April 1, 2010, Plaintiff filed a Motion to File a First Amended Complaint. [Doc. 55.]

19   Specifically, Plaintiff asks to amend his Complaint to accomplish the following: (1) expand

20   allegations against Defendant Orduno; (2) add a new Defendant, Dr. Hjerpe; and (3) "delete the

21   retaliation claim." Id. In addition, Plaintiff filed a Motion to Join a Defendant to the Complaint,

22   which repeats the request to add Dr. Hjerpe as a Defendant. [Doc. 56.] At present, the motions are

23   fully briefed. Based on a review of the parties' pleadings, the proposed First Amended Complaint,[1]

24   and for the reasons set forth below, the Court hereby **GRANTS** Plaintiff's motions to amend.

25   **II. DISCUSSION**

26   **A.   Parties' Arguments**

27   Plaintiff explains that he learned of new information after receiving discovery of his medical

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[1] Plaintiff submitted the First Amended Complaint as an exhibit to his motion. [Doc. 55, Ex. 1.]

1   records in October 2009. First, he discovered that Defendant Orduno had stopped scheduling his

2   physical therapy appointments. Thus, Plaintiff seeks to add a "one paragraph factual allegation" that

3   Orduno stopped scheduling his appointments. Second, Plaintiff contends there is an inconsistency

4   between Dr. Hjerpe's notes in the medical records and his February 26, 2010 declaration, which

5   allegedly demonstrates Dr. Hjerpe's "complicity" in the "conspiracy."

6   Defendants argue Plaintiff delayed, without justification, in seeking leave to amend, and that

7   this untimely amendment would prejudice the defense. First, Defendants highlight that Plaintiff

8   requested his medical records in May 2009 from prison officials at Kern Valley State Prison, rather

9   than making a direct request from Defendants (employed at Calpatria State Prison). Second,

10 Defendants argue that Plaintiff waited over five months, after receiving his medical records, to file

11 his motion to amend.

12 **B.   Analysis**

13   Leave to amend should be freely given "when justice so requires." Fed.R.Civ.P. 15(a)(2).

14 Furthermore, "[t]his policy is applied even more liberally to pro se litigants." Eldridge v. Block, 832

15 F.2d 1132, 1135 (9th Cir. 1987). In light of this liberal standard, the Court can consider the

16 following factors: "(1) undue delay, (2) bad faith, (3) prejudice to the opposing party, (4) futility of

17 amendment, and (5) whether plaintiff has previously amended his complaint." Castle v. Knowles,

18 2010 WL 2232394, at *4 (E.D. Cal. June 3, 2010)(holding these factors apply to a *pro se* prisoner's

19 motion to amend the complaint)(quoting factors set forth by W. Shoshone Nat'l Council v. Molini,

20 951 F.2d 200, 204 (9th Cir.1991)).

21   First, although Plaintiff delayed in filing his motion to amend, "[s]trict time limits ought not

22 to be insisted upon where restraints resulting from a pro se plaintiff's incarceration prevent timely

23 compliance with court deadlines." Eldridge, 832 F.2d at 1136. Furthermore, the Court does not find

24 that Plaintiff seeks to amend in bad faith, and Defendants have failed to identify meaningful

25 prejudice that would result from an amendment of the complaint. Additionally, "construing

26 [Plaintiff's] pleadings liberally in [his] favor," Shaw v. County of San Diego, 2009 WL 1796532

27 (S.D. Cal. June 24, 2009), Plaintiff's new allegations are not futile as a matter of law. Finally, this is

28 Plaintiff's first request to amend the Complaint. In light of the foregoing, the Court GRANTS

1 Plaintiff's motion to amend the Complaint.

2 ### III. CONCLUSION AND ORDER

3 Plaintiff's Motion to File First Amended Complaint [Doc. 55] and Motion to Join a

4 Defendant to the Complaint [Doc. 56] are hereby GRANTED. Accordingly, IT IS HEREBY

5 ORDERED:

6   1.   The Clerk of Court shall file Plaintiff's First Amended Complaint [Doc. 55-1] as a

7   new entry on the docket of this case.

8   2.   The Clerk shall issue a summons upon Defendants as to Plaintiffs First Amended

9   Complaint. In addition, the Clerk shall provide Plaintiff with: (1) a blank U.S.

10   Marshal Form 285 for Defendants Dr. Hjerpe, T. Davis, and Sgt. Preciado; (2) a

11   certified copy of this Order; (3) certified copies of his First Amended Complaint and

12   the summons for purposes of serving Defendants. Upon receipt of this "IFP

13   Package," Plaintiff is directed to complete the Form 285s as completely and

14   accurately as possible, and to return them to the United States Marshal according to

15   the instructions provided by the Clerk in the letter accompanying his IFP package.

16   Thereafter, the U.S. Marshal shall serve a copy of the First Amended Complaint and

17   summons upon each Defendant as directed by Plaintiff on each Form 285.

18   3.   Defendants are thereafter ORDERED to reply to Plaintiff's First Amended Complaint

19   within the time provided by the applicable provisions of Federal Rule of Civil

20   Procedure 12(a).

21   4.   The Court schedules a Case Management Conference on **August 11, 2010** at **9:30**

22   **a.m.** in the chambers of the Honorable Louisa S Porter, First Floor, 940 Front Street,

23   San Diego, California. Defendants' counsel shall appear in person. Furthermore,

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1   Defendants' counsel shall make arrangements with the state prison for Plaintiff to

2   appear <u>telephonically</u>. The Court authorizes Plaintiff to call into Judge Porter's

3   chambers at **9:30 a.m.** on the day of the conference. Plaintiff may contact chambers

4   at (619) 557-5383.

5   IT IS SO ORDERED.

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7 DATED: June 30, 2010

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9   LOUISA S PORTER
                                       United States Magistrate Judge

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12 cc: The Honorable Jan M. Adler
                 All parties

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